

REMARKS

In the subject Office action, the Examiner rejected Claims 1 through 7 under 35 U.S.C. § 103 (a). Specifically, the Examiner rejected Claims 1 through 5 under 35 U.S.C. § 103(a) as being unpatentably obvious over U.S. Patent No. 3,604,027 to Konno for a CONSTRUCTION FOR BED OR CHAIR in view of U.S. Patent No. 5,558,314 to Weinstein for a FLUID-LIKE SUPPORT DEVICE. The Examiner rejected Claim 6 as being unpatentably obvious over the Konno and Weinstein combination in further view of Applicant's specification. Lastly, the Examiner rejected Claim 7 as being unpatentably obvious over the Konno and Weinstein combination in further view of U.S. Patent No. 3,467,973 to Minnick for a MAGNETIC SPRING OR SHOCK ABSORBER DEVICE.

Applicants respectfully assert that the Examiner has failed to establish a prima facie case of obviousness in regards to independent Claim 1 at least because the cited references do not contain any motivation or suggestion to combine the references. Furthermore, the combination of Konno and Weinstein does not teach each and every limitation of independent Claim 1. As a result, the combination cannot properly serve as a basis for rejection of independent Claim 1 or any dependent claim. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections of the claims.

Konno discloses an apparatus for maintaining magnets in an opposing relationship comprising: a first magnet [12a] having a first magnetic field in a first direction; a second magnet [12b] having a second magnetic field in a second direction that substantially opposes the first orientation [column 1, lines 35-41]; and a plurality of springs [11] cooperating with the magnets. Konno does not, however, teach attachment of the springs to the magnets themselves. The Examiner even notes this, stating "Konno disclose (sic) everything claimed except the springs being attached to the first and second magnets." The Examiner asserts Weinstein to cure this defect of Konno. The Examiner states, "Weinstein discloses a support apparatus having a plurality of support plates [68, 69] with springs [63] therebetween," and that "[i]t would have been obvious... to mount the springs between the magnets of Konno, as suggested by Weinstein." However, a thorough examination of Weinstein shows it is completely devoid of any teaching regarding magnets and is completely devoid of teaching the attachment of springs to magnets. Indeed in Weinstein, the springs are attached to "support plates" [68, 69] and not magnets.

Accordingly, one skilled in the art would have no motivation to combine Konno with Weinstein because Weinstein does not relate to magnets in any manner. An apparatus according to Weinstein is quite simply a system of support plates, springs, and other support members. There is no suggestion of using support plates that comprise magnets of any type.

Even if the Konno and Weinstein references are combined, the combination does not produce each and every limitation of independent Claim 1, which requires “a plurality of springs, each spring of the plurality of springs attached to the first and second magnets.” As discussed above, “Konno disclose (sic) everything claimed except the springs being attached to the first and second magnets” and Weinstein merely teaches the attachment of springs to “support plates” [68, 69] and, as described above, is completely devoid of any teaching or suggestion of magnets. Therefore, the combination of references fails to teach or suggest all limitations of independent Claim 1. Accordingly, even if Konno and Weinstein are combined, each and every limitation of Applicant’s invention is not represented. As a result, this combination of references cannot properly serve as a basis for rejection of independent Claim 1 under 35 U.S.C. § 103(a).

The Examiner also rejected Claims 2 through 5 under 35 U.S.C. § 103(a) as being unpatentably obvious over Konno and Weinstein. Each of these claims depends from Claim 1. The Examiner notes, “the specific number of springs used would have been an obvious design consideration based on (sic) size of the apparatus.” However as discussed above, the combination of Konno and Weinstein does not establish a prima facie case of obviousness in regards to Claim 1, because the rejection of independent Claim 1 is improper, the rejection of Claims 2 through 5, which are dependent upon Claim 1, is also improper. Therefore, Applicant respectfully asserts that this combination of references cannot properly serve as a basis of rejection for dependent Claims 2 through 5 under 35 U.S.C. § 103(a).

The Examiner also rejected Claim 6 under 35 U.S.C. § 103(a) as being unpatentably obvious over Konno and Weinstein in further view of Applicant’s specification. Claim 6 also depends from independent Claim 1. Applicant assumes for purposes of these Remarks that the Examiner intended to combine Weinstein with Konno as the basis for rejecting Claim 6 because the Examiner stated, “Regarding Claim 6, Konno disclose (sic) everything Claimed except the use of rare earth magnet” and then proceeded to cite Applicant’s specification to support the obviousness rejection without any mention of Weinstein. As discussed above, the Examiner relies on Weinstein to overcome Konno’s deficiency in teaching the attachment of springs to magnets. However, the combination of Konno and Weinstein does not establish a

prima facie case of obviousness because the cited references do not contain any motivation or suggestion to combine the references nor does the combination of Konno and Weinstein teach every limitation of Applicant's invention. Accordingly, because the rejection of independent Claim 1 is improper the rejection of Claim 6, which is dependent upon Claim 1, is also improper. Therefore, Applicant respectfully asserts that this combination of references cannot properly serve as a basis for rejection for dependent Claim 6 under 35 U.S.C. § 103(a).

The Examiner also rejected Claim 7 under 35 U.S.C. § 103(a) as being unpatentably obvious over Konno and Weinstein in further view of U.S. Patent No. 3,467,973 to Minnick for a MAGNETIC SPRING OR SHOCK ABSORBER DEVICE. Claim 7 also depends from independent Claim 1. The Examiner notes the combination of references "disclose (sic) everything claimed except for varying the strength of the magnets used" and that "Minnick discloses a suspension apparatus having means [figure 3] to vary the force applied between the two support surfaces [13, 14]" and asserts Minnick to cure this defect of the combination of Konno and Weinstein. However as discussed above, the combination of Konno and Weinstein does not establish a prima facie case of obviousness because the cited references do not contain any motivation or suggestion to combine the references nor does the combination of Konno and Weinstein teach every limitation of Applicant's invention. Because the rejection of independent Claim 1 is improper, the rejection of Claim 7, which is dependent upon Claim 1, is also improper. Therefore, Applicant respectfully asserts that this combination of references cannot properly serve as a basis for rejection under 35 U.S.C. § 103(a).

Applicant believes all pending Claims define patentable subject matter, and that the Remarks made herein overcome all outstanding rejections. Applicant requests that the Examiner withdraw the rejections and issue a Notice of Allowability.

Applicant believes this Reply to be fully responsive to the Office action mailed on November 17, 2004. If the Examiner believes that personal communication would advance the prosecution of this application, Applicant respectfully requests that the Examiner contact his attorney at the number listed below.

Respectfully submitted,



J. Matthew Buchanan
Registration No. 47,459

LAW OFFICES of
FRASER MARTIN BUCHANAN MILLER LLC
132 West Second Street
Perrysburg, OH 43551
(419) 874-1100